

Ordinance No. 3-04

ORDINANCE: To amend Chapter 4, “Arts and Cultural Affairs” to amend the definition of works of art and to add a new Article requiring the expenditure of funds for the provision of publicly accessible art in private development, requiring the submission of plans for art as part of the development process, providing for the maintenance of the art, and providing for the administration and enforcement of the new Article and its requirements.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE,  
THAT Chapter 4, entitled “Arts and Cultural Affairs,” be amended as follows:

Section 1. Amend Article III, “Definitions” as follows:

**ARTICLE III. INCORPORATION OF WORKS OF ART IN  
PUBLIC ARCHITECTURE**

**Sec. 4.31. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

\* \* \*

*Works of art* means the application of skill and taste by an Artist according to aesthetic principles to an original creation in the visual, performing, or literary arts as defined in section 4-40 of this Chapter. “Works of art” does not include fixtures or features such as grates, streetlights, benches, signs, the choice or use of materials in architecture, or other design enhancements unless designed by an artist as a unique feature for the project. Landscaping does not qualify as a work of art.

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Section 2. Add a new Article IV, entitled “Publicly Accessible Art in Private Development” to read as follows:

**ARTICLE IV. Publicly Accessible Art in Private Development****Sec. 4-40. Definitions.**

The following words, terms and phrases, when used in this Article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Applicant* means the person who applies for permission to undertake any construction project for which a new use permit, detailed application approval, subdivision approval for a residential development not requiring a use permit or detailed application, building permit, or the amendment of any such existing permit or approval is required.

*Art* means the application of skill and taste by an Artist, according to aesthetic principles, to an original creation in the visual, performing, or literary arts. “Art” does not include fixtures or features such as grates, streetlights, benches, signs, the choice or use of materials in architecture, or other design enhancements, unless designed by an artist as a unique feature for the project. Landscaping does not qualify as art.

*Artist* means a person who employs skill, talent, and creativity in an artistic medium or discipline, including but not limited to the visual, performing, and/or literary arts, and who meets one or more of the following criteria: realizes income through the sale, performance, publication, or commission of works of art; has previously exhibited, presented, performed, or published works of art in museums, galleries or other recognized art venues; has formal training or education in a field of art; has received awards or other form of recognition from recognized artists or arts organizations for his/her artistic accomplishments.

*Art event* means the display or presentation of art on a temporal basis under the supervision of an artist or professional arts administrator.

*Arts-based infrastructure* means infrastructure needed to showcase art or otherwise support arts-related activities. Arts-based infrastructure includes, but is not limited to, furnishings, electrical, sound, and/or visual systems.

*Arts space* means a physical space dedicated to an ongoing arts-related use. Arts space includes, but is not limited to, indoor and/or outdoor spaces that function as administrative offices, performing/rehearsal facilities, presentation halls for film or lecture, programmed exhibit space, and art educational classrooms.

*City Manager* means the City Manager of the City of Rockville or the City Manager’s designee or designees.

*Construction project* means any project to construct or renovate a permanent building or structure undertaken by a party other than the City or other government or public entity.

*Construction project site* means the property on which the construction project is located.

*Cultural Arts Commission* means the Cultural Arts Commission created by Chapter 4 of the Rockville City Code.

*Eligible Arts Organization* means an organization that has met the following five criteria for at least 24 consecutive months immediately preceding a proposed donation of money, arts space, or arts-based infrastructure pursuant to this Article: (1) has as its primary mission the exhibition, presentation, production or performance of, and/or education in the arts and/or the humanities; (2) holds current status under IRA code 501(c)(3) or is a specifically defined arts organization within a larger 501(c)(3) organization; (3) has its primary office in the City of Rockville; (4) is governed by an independent, legally liable board of directors operating under a mission statement for the organization and an operating budget specific to the organization; and (5) offers more than half of its programs and services in the City of Rockville and these programs and services are open to the public, with or without charge.

*Gross floor area* means the total number of square feet of floor area in a building or non-accessory parking structure excluding uncovered steps, uncovered porches, rooftop mechanical equipment enclosures and accessory off-street parking, but including cellars and basements designed and available for tenant use or occupancy. All measurements shall be made between exterior faces or walls or the centerline of walls of abutting buildings, foundations, piers or other means of support.

*Humanities* means archaeology, art history and criticism, comparative religion, ethics, history, jurisprudence, language, literature, philosophy and related social sciences.

*Literary art* means the creation and publication of written material that satisfies the definition of art, as defined herein.

*Non-accessory parking structure* means a structure used for the parking of motor vehicles that is not accessory to another primary use on the site.

*Performing art* means the temporal presentation to an audience of music, dance, drama, musical theatre, opera, film, sound, video, and/or spoken presentations such as lectures or readings.

*Person* includes an individual, association, firm, partnership, corporation, or other entity, but does not include the City or other government entity.

*Planning area* means a geographic area of the City established by the Approved and Adopted Comprehensive Master Plan that will be the subject of detailed planning studies or neighborhood plans within the framework of the Comprehensive Plan.

*Planning Commission* means the Planning Commission of the City of Rockville.

*Professional Arts Administrator* means an organization or individual working as a professional administrator of the arts, who realizes income through the provision of services to contract artists and arts media for venues with public audiences, demonstrates previous success in oversight of on-site logistics, and provides leadership to appropriately market art events.

*Publicly accessible art* means privately owned, maintained, or produced works of art installed, presented, or performed in a location that is accessible to the public. If the art is located in an interior location it must be publicly accessible during normal business hours.

*Publicly accessible art expenditure* means the funds required by this Article to be spent on publicly accessible art.

*Social service agency* means any public or non-profit 501(c)(3) organization that provides or coordinates the provision of the basic human necessities (such as food, clothing, and shelter), health (including mental health) services, and/or those services that directly serve and protect the economic well-being and/or social functioning of individuals and families.

*Visual art* means tangible objects of art including, but not limited to paintings, sculptures, engravings, carvings, frescos, mobiles, murals, collages, mosaics, statues, bas-reliefs, tapestries, photographs, light/neon, drawings, stained glass, fountains, film, sound, video or other decoration, or any combination of media.

#### **Sec. 4.41. Purpose.**

The purpose of this Article is to promote the general welfare by requiring and encouraging the use and incorporation of works of publicly accessible art in private development in order to preserve and enrich the character and environment of the community, improve the quality of life for those who visit, live and/or work in the City, ameliorate the harshness of increased urbanization, and foster the economic vitality of the community.

**Sec. 4-42. Scope.**

Except as otherwise provided, the provisions of this Article apply to all construction projects that require a new Use Permit, Detailed Application approval, subdivision approval for a residential development not requiring a Use Permit or Detailed Application, or the amendment of any such existing permit or approval. The provisions of this Article shall also apply to any application for a new building permit for interior and/or exterior modifications, renovation, or additions to multi-family residential, commercial or industrial development for which a new or amended use permit is not required.

**Sec. 4-43. Interpretation.**

The provisions of this Article are to be liberally construed so as to effectuate the purposes of this Article and to encourage creativity.

**Sec. 4-44. Expenditure for publicly accessible art required; exclusions.**

(a) All construction projects not otherwise excluded from the requirements of this Article must include the expenditure of funds to provide for publicly accessible art.

(b) The required publicly accessible art expenditure shall be calculated in accordance with the following schedule:

(1) Single family detached and townhouse construction:

- a. \$323.40 per dwelling unit for the first 100 dwelling units.
- b. \$242.55 per dwelling unit for the second 100 dwelling units.
- c. \$161.70 per dwelling unit in excess of 200 dwelling units.

(2) Multi-family residential construction:

- a. \$485.10 per dwelling unit for the first 100 dwelling units.
- b. \$363.86 per dwelling unit for the second 100 dwelling units.
- c. \$242.55 per dwelling unit in excess of 200 dwelling units.

(3) Commercial construction (including non-accessory parking structures):

- a. \$.32 per square foot for the first 100,000 square feet of gross floor area.
- b. \$.25 per square foot for the second 100,00 square feet of gross floor area.
- c. \$.16 per square foot exceeding 200,000 square feet of gross floor area.

(4) Industrial construction: \$.08 per gross square foot of gross floor area.

(5) Expansion of an existing residential project:

a. The required expenditure shall be calculated based on the number of additional dwelling units. (Not including approved accessory apartments).

b. If the additional dwelling units increase the number of dwelling units in the residential project by 100% or more, the required expenditure shall be calculated based on the total number of dwelling units in the project.

(6) Expansion of an existing commercial or industrial building, or a non-accessory parking structure:

a. The required expenditure shall be calculated based on the amount of additional gross floor area.

b. If the additional gross floor area increases the size of the existing building or structure by 100% or more, the required expenditure shall be calculated based on the total gross floor area of the building or structure.

(7) Renovations to an existing commercial or industrial building or non-accessory parking structure:

a. Renovation disturbing 50% or more of the gross floor area of the building or structure: the required expenditure shall be calculated based on the gross floor area of the entire building or structure at the rate applicable to construction of the same type.

b. Any renovation that when considered together with all renovations to the same building or structure occurring within the preceding 24 months disturbs 50% or more of the gross floor area of the building or structure shall subject the entire building or structure to the publicly accessible art expenditure requirements of this section at the rate applicable to construction of the same type.

(c) The publicly accessible art expenditure required by this Article shall be adjusted annually to reflect the increase or decrease in the Builder's Cost Index (BCI), as published by Engineering News Record, published by the McGraw Hill Companies.

(d) The following construction projects are not subject to the requirements of this section:

(1) New residential construction projects consisting of a total of less than ten (10) dwelling units.

(2) Construction of moderately priced dwelling units (MPDUs) as defined in Chapter 13.5 of this Code, or other comparable housing projects designated for households with incomes at or below the MPDU income limits, and/or residential projects for which prices are set at or below the maximum MPDU sales or rent price levels. These projects must have long-term controls over sales and/or rent prices that are deemed acceptable to the City Manager.

(3) Construction of places of worship and their accessory uses located on the same site.

(4) Construction projects in which a social service agency is the owner of the project and an occupant of at least 50% of the premises.

(5) Renovations or reconstruction to repair damage or deterioration caused by fire, flood, explosion, earthquake, weather-related event, vandalism, act of war, or civil disturbance.

(6) Parking structures that are accessory to another primary use on the site.

(7) The following renovations to existing buildings or structures:

a. Government mandated code compliance construction projects, such as projects exclusively designed for compliance with the Americans with Disabilities Act (“ADA”), the Maryland Accessibility Code, the National Fire Protection Association (NFPA) Life Safety Code, and/or fire sprinkler retrofits required by the City.

b. Renovations to a building or structure for which a publicly accessible art expenditure has previously been made pursuant to this Article within the previous 10 years. This exception does not apply to any renovation that increases the building envelope of the existing building or structure.

c. Renovations in which less than 50% of the gross floor area of the building is disturbed, except as otherwise provided by subsection (b)(7)b. of this Section. This exception does not apply to any renovation/addition that increases the building envelope of the existing building or structure.

**Sec. 4-45. Publicly accessible art options.**

The publicly accessible art expenditure requirement of this Article may be satisfied by utilization of one or more of the following options at the discretion of the developer:

(a) Installation or presentation of publicly accessible art in any of the following locations:

(1) On the construction project site.

(2) On other private property within the same planning area as the construction project site.

(3) On City property or other public property within the same planning area as the construction project site, subject to the approval of the City or other owner of the public property.

(b) Monetary donation to any of the following:

(1) The City of Rockville's "Friends of the Arts" fund.

(2) A specific City of Rockville "Art in Public Places" project located in the same planning area in which the construction project is located.

(3) An Eligible Arts Organization, as defined herein.

(c) Provide arts space or arts-based infrastructure in the City for use by the City of Rockville or an Eligible Arts Organization suitable to the needs and purposes of the intended user and subject to the approval of the intended user.

(d) Combine the art expenditure requirements of two or more development projects within the same planning area to provide publicly accessible art, an arts space, or an arts-based infrastructure.

**Sec. 4-46. Criteria for the design, selection, and implementation of publicly accessible art.**

(a) The following criteria should be considered by the applicant when designing and selecting publicly accessible art:

(1) The art should be located where the public has ready access, such as lobbies, plazas, green areas, etc.

(2) Visual art should be designed for safety, durability of design and materials, and suitability for the intended location.

(3) Visual art should be easy to maintain in its original and intended state.

(b) Responsibility for final selection, expenses. The final selection of the art and/or artist(s) to be commissioned for creation or presentation of publicly accessible art



is the sole responsibility of the applicant. The applicant is responsible for all expenses incurred in connection with the selection process and all expenses for the artist's design, fabrication, installation, and/or presentation of publicly accessible art required by this Article.

(c) Ownership. All visual art, arts spaces, and arts-based infrastructure will become the property of the owner of the land on which the art, arts space or arts-based infrastructure is located.

**Sec. 4-47. Submission of plans for publicly accessible art required; implementation.**

(a) A conceptual plan for the provision of publicly accessible art shall be submitted with any application for a Use Permit, application for Detailed Application approval, or application for preliminary subdivision plan subject to the requirements of this Article. The conceptual plan shall include the location of the art, a conceptual description of the art, and the qualifications of the artist. Where an arts space or arts-based infrastructure will be provided, the conceptual plan shall include the location of the arts space or arts-based infrastructure, an acknowledgement from the intended user(s) that the arts space and/or the arts-based infrastructure is suitable for their needs and purposes and will be utilized by the intended user(s).

(b) A final plan for the provision of publicly accessible art shall be submitted with any application for a building permit and shall include a detailed description of the art, the arts space, or arts-based infrastructure; an itemization of the costs related to the art, the arts space, or the arts-based infrastructure; and a statement of the amount of the publicly accessible art expenditure required for the construction project.

(c) Publicly accessible art, arts space, or arts-based infrastructure shall be installed or presented in substantial conformance with the final plan prior to the issuance of the first occupancy permit for the construction project or in accordance with such other schedule as may be approved in connection with the approval of the construction project. An agreement shall be executed and a bond posted by the applicant, in a form approved by the City Attorney, prior to the issuance of the first occupancy permit for the construction project for any art, arts space, or arts-based infrastructure to be installed or presented subsequent to the issuance of the first occupancy permit for the construction project.

**Sec. 4-48. Installation and Maintenance of Publicly Accessible Art.**

(a) Publicly accessible visual art, arts space, or arts-based infrastructure must be installed and maintained so as not to fall into a state of disrepair or become a nuisance.

(b) Failure of the applicant to install or maintain publicly accessible visual art, arts space or arts-based infrastructure in a state of good repair shall constitute a violation of this Article,

**Sec. 4-49. Removal, relocation and replacement of publicly accessible works of art.**

(a) Publicly accessible visual art installed as part of a construction project pursuant to the provisions of this Article may be relocated or replaced on-site provided that the relocated and/or replaced art is located in an area accessible to the public.

(b) Publicly accessible visual art installed as part of a construction project pursuant to the provisions of this Article may not be removed from the construction project site within five years from its installation unless it is replaced on-site with other publicly accessible art or payment of a contribution is made to the City for use in providing publicly accessible art. Said payment shall be made in accordance with an art contribution schedule to be established by resolution of the Mayor and Council.

(c) Arts spaces and arts-based infrastructure installed in satisfaction of the art expenditure requirement of this Article may not be removed or relocated unless approved by the City Manager, subject to such reasonable terms and conditions as may be imposed.

**Section 4-50. Administration.**

(a) City Manager. The City Manager shall establish policies and procedures deemed appropriate for the implementation of the provisions of this Article, including but not limited to providing developers with guidelines and other information to assist them in complying with the provisions of this Article.

(b) Mayor and Council. The Mayor and Council by resolution shall establish the art contribution schedule referenced in section 4-49(b) herein.

(c) Upon request of an applicant, the Cultural Arts Commission shall provide advice on a selection process to procure and implement publicly accessible art.

**Sec. 4-51. Enforcement**

(a) Failure to comply with any provision of this Article shall constitute a municipal infraction as set forth in section 1-9 of this Code.

(b) In addition to any other remedy set forth in this Article, the City shall have those remedies set forth in section 1-11 of this Code.

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I hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the Mayor and Council at its meeting of February 9, 2004.

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Claire F. Funkhouser, CMC, City Clerk